



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,219	04/09/2001	Antonio Montserrat Gibernau	932.1194	8578

21831 7590 09/07/2004

STEINBERG & RASKIN, P.C.  
1140 AVENUE OF THE AMERICAS, 15th FLOOR  
NEW YORK, NY 10036-5803

EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/829,219

Applicant(s)

MONTERRATE GIBERNAU,  
ANTONIO

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 6, 2004 has been entered. Claims 1-15 remain pending in the application.
2. The rejection of claims 1-14 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement has been withdrawn in light of the amended claim language.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Levinson reads on the claims in two ways
5. (i) where the inner wrapper is understood to be the paper-based layer 3  
(ii) where the inner wrapper is understood to be film 2 and the insulating layer is taking to be layer 3.

Both rejections will be presented.

Art Unit: 1761

6. Claims 1, 5, 11, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Levinson (US 4390554).

7. With respect to the rejection (i), Levinson teaches a microwave package (Column 3, lines 23-56) comprising an outer polyethylene film, as recited in claim 11, (film 4 of Figure 1) that melts during heating (Column 4, lines 30-45), an outer paper substrate as recited in claim 5 (column 3, lines 51-54, insulation 5 of Figure 1) optionally attached to an outer face of the outer package for insulating the package from the oven surface, an inner paper wrapper as recited in claims 11 and 15 (item 3 of Figure 1) encompassing the food (item 1 of Figure 1), and the inner wrapper may further contain salt water (i.e. 14 in layer 3, Column 5, lines 24-42) so that under microwave radiation the salt water boils and its hot vapor heats up the food, thus serving as a "strip" of heat-concentrating material as recited in claims 1, 13, and 15.

8. Although Levinson does not explicitly teach the melting of the outer package occurs *to permit* the removal of the inner wrapper, the melting of the outer package 13 would inherently result in allowing the removal of the inner wrapper 3 from the outer package since, as shown in Figure 1, the meltable outer package 13 completely surrounds the inner wrapper 3 and in melting access to the inner wrapper would be possible.

9. Claims 1, 5, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Levinson (US 4390554).

10. With respect to the rejection (ii), Levinson teaches a microwave package (Column 3, lines 23-56) comprising an outer polyethylene film, as recited in claim 11, (film 4 of Figure 1) that melts during heating (Column 4, lines 30-45), an outer paper substrate as recited in claim 5 (column 3, lines 51-54, insulation 5 of Figure 1) optionally attached to an outer face of the outer package, an inner wrapper (item 2 of Figure 1) containing food (item 1 of Figure 1), and an insulating layer (item 3, i.e. containing paper, cotton or plastic fibers) that may contain salt water (i.e. 14 in layer 3, Column 5, lines 24-42) so that under microwave radiation the salt water boils and its hot vapor heats up the food, and thus the insulating material also contains serving as a "strip" of heat-concentrating material as recited in claims 1 and 13.

11. Although Levinson does not explicitly teach the melting of the outer package occurs *to permit* the removal of the inner wrapper, the melting of the outer package 13 would inherently result in allowing the removal of the inner wrapper 3 from the outer package since, as shown in Figure 1, the meltable outer package 13 completely surrounds the inner wrapper 3 and in melting access to the inner wrapper would be possible.

### ***Claim Rejections - 35 USC § 103***

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 3 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable Levinson (US 4390554) as applied to claims 1,5,11,13, and 15 in rejection (i), further in view of Cox (US 5679278).

14. Regarding claim 3, as discussed in the rejection (i) Levinson teaches the substrate is paper, cardboard, cotton, or plastic fibers, but is silent in teaching that it is made of a web of continuous material common to a plurality of packages that have an outer package and inner wrapper. Cox also teaches a microwave food package with an inner wrapper (item 38), an outer package made of plastic material (i.e. item 40 is made from PET), and a substrate (item 42) to protect the user during handling, like Levinson . Cox teaches the substrate layer being made from a continuous web of paper material such as kraft paper in the form of a web (item 90) that allows for the continuous production of multiple packages having an outer package and inner wrapper (Column 5, line 42 to Column 6, line 54, Column 7, lines 45-52, Figures 6, 7 and 20). Therefore, it would have been obvious to modify Levinson and include a continuous web of paper material this common to a plurality of packages since this would allow for the continuous production of multiple packages.

15. Regarding claim 14, although Levinson teaches the heat concentrating material is applied to the inner wrapper (i.e. in item 3), which is encompassed by the outer package as discussed in rejection (i), but Levinson is silent in teaching the heat concentrating material is *applied on* the outer package. However, as discussed above in the preceding paragraph, Cox teaches a microwave food packages with inner layers (e.g. 38), outer layers (e.g. item 40), and substrates (i.e. 42) applied to the outer layer,

Art Unit: 1761

wherein the heat concentrating material is applied to the inner layer, but Cox further teach the heat concentrating layers *may* be applied, depending on the shape and desired heating location, on the outer package as recited in claim 14 (Column 6, lines 20-54, Column 5, lines 42-65). Therefore, it would have been obvious to modify Levinson and apply the heat concentrating layer to the outer package since Cox teaches the particular location (i.e. outer or inner package) to which the heat concentrating materials are applied depends on (1) the shape of the package and (2) the desired heating location.

16. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable Levinson (US 4390554) as applied to claims 1,5,11,13, and 15 in rejection (i), further in view of Smart et al. (US 4890439).

17. As discussed above, in rejection (i), Levinson teaches a heat-concentrating layer associated with the inner paper wrapper for heating the food, but is silent in teaching aluminum oxide. Smart et al. teach although it is common place to heat food in the microwave, it is sometimes desirable to brown some types of food to provide an appealing taste and appearance (Column 1, lines 15-35). Smart et al. teach providing the an aluminum oxide layer attached to paper inner wrapper to achieve this affect (Column 5, lines 8-26 in light of Column 6, lines 25-54). Therefore, it would have been obvious to include aluminum oxide as the heat concentrating layer of Levinson since Smart et al. teach it is sometimes desirable to brown certain types of food to provide an appealing taste and appearance and this would be possible with aluminum oxide .

18. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable Levinson (US 4390554) as applied to claims 1,5,11,13, and 15 in rejection (i), further in view of Borek (US 4219573).

19. Regarding claim 9, as discussed above in rejection (i), Levinson teaches it may be necessary to insulate the package from a cool oven surface using a substrate, or item 5 in Figure 1(Column 4, lines 40-45), but Levinson is silent in teaching using an adhesive . Borek is also concerned with heat is lost in microwave packages to the microwave floor and teaches it is preferred that such a substrate is bonded in a permanent fashion to the package the outside of the package to prevent heat loss (Column 3, line 14 to Column 4, line 16). Therefore, it would have been obvious to use adhesive to attach the substrate to the outer package since Levinson teaches insulating the package from the oven surface using the substrate and Borek teaches it is preferred to bond or adhere a similar substrate in a permanent fashion to an outer package to prevent heat loss.

20. Claims 2,7, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable Levinson (US 4390554) as applied to claims 1,5, and 13 in rejection (ii), further in view of Borek (US 4219573).

21. Regarding claims 2,7,10, as discussed above in rejection (ii), Levinson teaches salt water may be added and impregnated, or coated as recited in claim 7, into the insulation layer (item 3) which is located on the inner part of the outer package (item 4),



but Levinson is silent in teaching the insulation layer is *attached* per se to the outer package by adhesive as recited in claims 2 and 10.

22. Like Levinson, Borek also teaches insulation layers for microwave food packages and position the insulation between layers of a package wall (i.e. between the wall of 9), such as between the inner and outer package of Levinson. Borek further teaches it is important to secure the insulation to the wall via bonding or gluing (Column 3, line 14 to Column 4, line 16). Therefore, it would have been obvious to modify Levinson and adhesively apply the insulation layer to the inner part of the outer package, as recited in claims 2 and 10 since Borek teaches it is important to secure an insulation layer to the walls of microwave food package with glue and bonding.

23. Claims 1,4-6,12,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engstrom et al. (US 4734288) in view of Anderson (US 4950859).

24. Regarding claims 1, 4-6,12, and 13, Engstrom et al. teach a microwave popcorn package comprising an inner wrapper (item 29) which comprises two sheets of material sealed together (i.e. items 30,31) which is formed of walls comprising laminates or at least two plastic layers, a polyethylene outer package that either itself melts during heating to permit removal of the inner wrapper (item 22 is solid at room temperature Column 2, lines 53-65, Column 5, line 64 to Column 6, line 43) or a weld line of the polyethylene (item 28) melts to facilitate opening during heating, as recited in claim 12, and a paperboard based substrate as recited in claim 5 that is equal in size to the outer package as recited in claim 4 (i.e. container 10 is coated by the polyethylene, Column 5,

lines 37-65). It is noted that claim 1 recites the packaging assembly "comprises" a "portion of the outer package" that is melted for access. As such, Engstrom can be interpreted as the entire outer package of polyethylene melts, which would "comprise" a melting portion, or a single weld located on the polyethylene (i.e. item 28) melts for accessing the inner wrapper. Engstrom et al. solely differ from the claims in teaching a heat-concentrating material as recited in claim 1, in a form of a strip as recited in claim 13, or between the two sheets of inner wrapper material as recited in claim 6.

25. Anderson also teaches a plastic based popcorn bag, and teaches including a layer of a heat concentrating material in the form of a strip that is placed in the bag to increase cooking efficiency (Column 3, line 67 to Column 4, line 21; Column 5, lines 25-52). Therefore, it would have been obvious to include a strip of a heat concentrating layer in the inner package as recited in claims 1 and 13, which would thus be between the two sheets of material forming the inner package as recited in claim 6 since Anderson teaches adding a strip of heat concentrating layer to the inside of a microwave popcorn bag improves cooking efficiency.

### ***Response to Arguments***

26. Applicant's arguments filed March 11, 2004, with respect to the rejections of record have been fully considered, but they are not persuasive. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. In light of

Art Unit: 1761

amended claims 1,10 and 15, however, a new ground(s) of rejection is made as set forth above.

**Conclusion**

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Poss (US 6436457 B1), Brauner et al. (US 5171950), and Sweeney et al. (US 3322319) teach cooking packages with inner wrappers and outer packages.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

29. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

30. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

Robert Madsen  
Examiner  
Art Unit 1761

